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Supreme Court, U.S.
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93-1883

No. _____

In The
Supreme Court of the United States
October Term, 1994

ELOISE ANDERSON, in her official capacity as Director of the California Department of Social Services and RUSSELL GOULD, in his capacity as Director of the California Department of Finance,

Petitioners,

v.

VERNA EDWARDS, Guardian ad Litem for Verna Edwards, et al.,

Respondents.

On Petition for a Writ of Certiorari To The United States Court of Appeals For the Ninth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether California's policy of requiring non-sibling children to be combined into one Aid to Families with Dependent Children (AFDC) assistance unit, thereby reducing the children's AFDC benefits because they live with relatives who also receive AFDC but who are not legally responsible for the children's support, violates federal regulations that prohibit states from reducing or prorating benefits solely because of the presence in the household of a non-legally responsible relative and from imputing income that is not actually available.

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RESPONDENTS' BRIEF IN OPPOSITION

Respondents, Verna Edwards, et al., hereby respectfully request that this Court deny the petition for a writ of certiorari seeking review of the decision of the United States Court of Appeals for the Ninth Circuit entered in this case on December 1, 1993.

STATEMENT OF THE CASE

Respondents brought this action to require California to conform its Aid to Families with Dependent Children (AFDC) policy to the ruling of the Court of Appeals for the Ninth Circuit in Beaton v. Thompson, 913 F.2d 701 (9th Cir. 1990). The respondents are children, living with relatives other than their parents, whose AFDC benefits have been reduced because the non-sibling children (e.g., cousins) with whom they live also receive AFDC benefits. Respondents challenged California Eligibility and Assistance Standards Manual of Policies and Procedures (hereinafter "MPP") § 44-205.31, subsequently recodified at § 82-824.1, which requires all needy individuals living in a household with one caretaker relative to be placed in one assistance unit.

Because California provides lower benefits per child as the number of people in the AFDC assistance unit increases, the challenged policy reduces AFDC benefits for children when they live in households with non-sibling children who also receive AFDC benefits. For example, a child living with an aunt and a cousin who are not on AFDC would receive $299 per month, but a child living

with the same relatives who receive AFDC benefits themselves would receive $117 per month.[1] Thus, children who live with poor relatives on AFDC receive only an incremental amount rather than the full benefit they would receive if they lived with wealthier relatives who do not receive AFDC at all.

Petitioners' forced combination of assistance units also means that any non-AFDC income of the relatives is assumed to be available to the non-sibling child. For example, if a cousin receives social security, the AFDC benefits of the assistance unit, and, thus of the non-sibling child will be reduced based on the assumption that the cousin's social security is available to the non-sibling child. By contrast, if the child lives with non-needy relatives who do not receive AFDC, the income of the relatives would not reduce the child's AFDC benefits. Respondents argue that this policy violates 45 C.F.R. §§ 233.20(a)(2)(viii), 233.20(a)(3)(ii)(D) and 233.90(a)(1).

On cross motions for summary judgment the district court struck down the California regulation, holding that Beaton v.

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[1] See Appendix 1.

Thompson, 913 F.2d 701 (9th Cir. 1990), was binding authority in this case. Pet. App. 15. The Court of Appeals affirmed the decision of the district court, Edwards v. Healy, 12 F.3d 154 (9th Cir. 1993), reprinted in Pet. App. 1, and denied petitioners' Petition for Rehearing and Suggestion for Rehearing En Banc, Pet. App. 28.

REASONS FOR DENYING THE PETITION

Although the decision below conflicts with decisions of the Massachusetts Supreme Court and the Court of Appeals for the Second Circuit, this case does not present an important issue of federal policy. The decision below does not invalidate any federal statute or regulation, nor does it conflict with any decision of this Court. Moreover, the flexibility petitioners seek in illegally redefining the assistance unit, is legally available through a congressionally created procedure that allows states to prorate expenses to take into account economies of scale. This procedure has the advantage of equity in that it treats all children equally regardless of whether their relatives are needy.

I. THE DECISION BELOW DOES NOT CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT

Petitioners assert that the rulings in Edwards and Beaton conflict with this Court's decision in Bowen v. Gilliard, 483 U.S. 587 (1987). However, as the district court pointed out, Gilliard addressed significantly different issues. Edwards v. Healy, No. S-91-1473, slip op., reprinted in Pet. App. 15, 25 (E.D. Cal. Apr. 24, 1992). Gilliard was a challenge to the constitutional validity of 42 U.S.C. § 602(a)(38), in which Congress carved out a limited exception to the rules concerning availability of income and the presumption that legally non-responsible[2] members of assistance units cannot be forced to share income.[3]

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[2] State law defines who is a legally responsible relative. In California, only the child's parents are legally responsible. California Family Code § 3900. The "legally non-responsible" relatives referred to here (aunts, uncles, cousins, grandparents) have no legal duty under general California law or the AFDC statute to provide for their abandoned, neglected or orphaned relatives.

[3] The general rule in AFDC is that grants may not be reduced and income may not be imputed based upon the presence of a person in the home, unless that person has a legal duty to support the AFDC family. Senate Finance Comm., Tax Equity & Fiscal Responsibility Act of 1982, S.Rep. No. 494, 97th Cong., 2d Sess. 49, reprinted in

(continued...)

In Gilliard, this Court held that Congress has the power to enact legislation requiring certain immediate (nuclear) family members to be in the same assistance unit and, therefore, to share income. In upholding congressional authority to pass a law that requires siblings to be in the same assistance unit, this Court relied on the federal congressional power to define the AFDC program, not the state's power to define assistance units. 483 U.S. at 604-05.

The petitioners also rely on statements in Gilliard which recognize that the income and resources of everyone in the assistance unit are attributed to all others in the assistance unit. The respondents do not disagree with these statements. Rather, the issue is whether requiring non-sibling children to be in the same assistance unit, and thereby attributing the income of non-responsible relatives to them, violates federal regulations. That Congress felt the need to

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[3](...continued)
1982 U.S.C.C.A.N. 781, 825. Congress can create exceptions to this rule. The only other exceptions to this rule are: the counting (deeming) of some stepparent's income, 42 U.S.C. § 602(a)(31); alien sponsor deeming, 42 U.S.C. § 615; the deeming of grandparent's income, 42 U.S.C. § 602(a)(39); and the rule allowing states to prorate grants in shared living situations, 42 U.S.C. § 612.

establish a sibling deeming rule requiring the mandatory inclusion of siblings and parents in assistance units speaks directly to the fact that states are not free to require such inclusion prior to congressional action. Defendants cannot demonstrate that their assistance unit rule is either mandated or permitted by Congress. Nothing in Gilliard authorizes the states to alter federal AFDC requirements, and nothing in the decision below conflicts with this Court's decision in Gilliard.

In addition, Beaton is consistent with earlier decisions of this Court, all of which have struck down AFDC schemes that had the effect of assuming financial support from non-legally responsible individuals. King v. Smith, 392 U.S. 309, 329 (1968); Lewis v. Martin, 397 U.S. 552, 558-59 (1970); Van Lare v. Hurley, 421 U.S. 338, 347 (1975).

II. THIS CASE DOES NOT PRESENT AN IMPORTANT QUESTION OF FEDERAL LAW

The decision below invalidated state AFDC policy on the grounds that it violates federal AFDC regulations. The decision does not affect the validity of any federal statute, does not invalidate any federal regulation, and does not affect any national welfare policy

articulated by Congress.

The petitioners claim that the decision below restricts states' freedom to set the amount of assistance. However, Congress has already provided that flexibility, and the states can take advantage of it by following the procedures set out in federal law. Under 42 U.S.C. § 612 and 45 C.F.R. § 233.20(a)(5), a state may adopt a "proration" policy that takes into account the economies of scale that result when extended families, or different families, live together.[4] Prorating is preferable to the petitioners' policy because it treats all families and children alike, regardless of whether the legally non-responsible person receives AFDC. Therefore, unlike California's policy invalidated below, children are not disadvantaged by living with needy relatives. In order to prorate household expenses, states must follow the procedures and requirements set forth in 45 C.F.R. § 233.20(a)(5), under which states must articulate a reasonable basis for their policy and the scope of their prorating plan. The

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[4] States may reduce grants based on the "economies of scale" for shared housing and utilities. For instance, a state, based on a study, could determine those in shared housing saved 30% on average and reduce the housing portion of the AFDC grant accordingly.

petitioners' failure to follow these procedures belies the claimed importance of this issue.

III. THE COURT OF APPEALS FOR THE NINTH CIRCUIT CORRECTLY INTERPRETS THE FEDERAL REGULATIONS

A. The Plain Language and Regulatory History of the Federal Regulations Supports the Ninth Circuit's Decision That Petitioners' Consolidation Policy Violates Federal Law

The regulations in question clearly prohibit states from: (1) reducing or prorating benefits[5] solely because of the presence in the household of a non-legally responsible relative, 45 C.F.R § 233.20(a)(2)(viii); (2) assuming contribution from a non-legally responsible relative except in certain defined circumstances concededly not present here, id.; (3) considering income and resources that are not actually available to the applicant or recipient, 45 C.F.R. § 233.20(a)(3)(ii)(D); and (4) using the presence in the house of a non-legally responsible individual as a basis for assuming the availability of income, 45 C.F.R. § 233.90(a)(1). The petitioners

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[5] Other than through a valid proration plan pursuant to 42 U.S.C. § 612.

argue that these regulations do not apply to the California policy at issue in this case because state flexibility to define assistance units predominates, and because the regulations apply only to children who live with relatives not receiving AFDC.

State flexibility cannot be used to circumvent the federal rules that govern the AFDC program. Shea v. Vialpando, 416 U.S. 251, 266 n.13 (1974). Petitioners' argument that the federal regulations do not apply to the California policy because states have the flexibility to define assistance units is circular. If states have flexibility to mandate the inclusion of non-legally responsible individuals in the assistance unit, and all income and resources of those in the assistance unit are considered in determining the amount of the AFDC payment, then states have complete flexibility to ignore the restrictions set out in the regulations. The petitioners are merely attempting to obscure the illegal imputation of income by labeling it as a redefinition of the assistance unit. As explained by the court in Wilkes v. Steffen, 831 F. Supp. 723 (D. Minn. 1993) (appeal pending):

> [T]he federal regulations define

> assistance unit as 'the group of individuals whose income, resources, and needs are considered as a unit for purposes of determining eligibility and the amount of payment.' 45 C.F.R. § 206.10(b)(5).
>
> . . . Indeed, as plaintiffs point out, the primary effect of consolidating assistance units . . . is to reduce the standard of need and payment amount. Allowing the state to evade eligibility and payment regulations merely by labeling its rule as a rule governing the composition of assistance units would elevate form over substance and eviscerate the federal availability regulations.

Id. at 731 (emphasis added).

The petitioners concede that the regulations prohibit states from reducing the AFDC grant paid to children who live with wealthy relatives who are not eligible for AFDC, but assert that states can reduce benefits to children when their relatives are poor. This incongruous result is supported neither by the language of the regulations nor by the case law interpreting them. The regulations do not expressly limit their effect to non-needy relatives. On the contrary, the regulations prohibiting attribution of income from non-legally responsible individuals refer to any source of income. One

regulation prohibits "assuming the availability of income" from "any individual" not legally obligated to support the needy child. 45 C.F.R. § 233.90(a)(1) (emphasis added). A second regulation prohibits the state from reducing the amount of AFDC "because of the presence in the household of a non-legally responsible individual." 45 C.F.R. § 233.20(a)(2)(viii). A third regulation flatly prohibits the state from considering income from any source unless it is "actually available . . . or [the] recipient . . . has the legal ability to make such sum available for support and maintenance." 45 C.F.R. § 233.20(a)(3)(ii)(D). Even when the income to be attributed is from the relative's AFDC benefits, the result is the same.[6] Federal regulations require states to treat all income in the same way unless there is a specific provision in federal law to the contrary. 45 C.F.R. § 233.20 (a)(1)(i).

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[6] Amici also argue that AFDC is not "income" under AFDC regulations and that California does not define it as such. Brief of Amici Curiae Supporting Petitioners at 22-23. To the contrary, the California Department of Social Services successfully made the opposite argument in Daniels v. McMahon, 4 Cal.App.4th 48 (1992). The court agreed with the state's characterization of an AFDC grant as income. Id. at 55-56.

The regulatory history supports the plain meaning of the regulations. Nowhere do the official comments to the regulations cited by the petitioners state that the regulations concern only the income of non-needy relatives. To the contrary, the comments make clear that the assumption of income regulations apply to all non-responsible relatives. In these comments, the Department of Health, Education, and Welfare (HEW) found "no basis for making a distinction between [different] non-legally liable individuals." 42 Fed. Reg. 6,583 (Feb. 3, 1977).

Neither is there language in the decisions of this Court to support the petitioners' argument for a limitation of the rules. Rather, this Court has defined the availability of income and resources solely in terms of who is legally responsible for the needy child under state law. King v. Smith, 392 U.S. at 329; Lewis v. Martin, 397 U.S. at 558-59; Van Lare v. Hurley, 421 U.S. at 346-347 (1975).

B. HHS' Policy Interpretation is Not Entitled to Deference

The petitioners rely on two memoranda from the United States

Department of Health and Human Services (HHS) to support their interpretation of the regulations. The first transmittal, Department of Health and Human Services (HHS) Action Transmittal No. SSA-AT-86-1, Pet. App. 44, merely refers to state flexibility to define assistance units. As discussed above, the respondents agree that states have flexibility to define assistance units within the bounds of other federal requirements. Respondents also agree that states must take into account the income and resources of everyone in the mandatory assistance unit defined by Congress. See 42 U.S.C. § 602(a)(38). Both Beaton and Edwards are consistent with these federal policies.

Petitioners also rely upon the 1994 HHS Action Transmittal, ACF-AT-94-6 (March 16,1994), Pet. App. 33.[7] This memorandum should be given no deference. First, agency interpretations cannot change the plain meaning of properly promulgated regulations. Bowles v. Seminole Rock Co., 325 U.S. 410, 414 (1945). The plain

[7] The petitioners' supplemental brief relies on the discussion in Bray v. Dowling, 1994 WL 234197, at *6 (2d. Cir. May 31, 1994), of a regional HHS official's letter written in 1976. However, the opinion of one individual in the regional office is not authoritative.

language of the regulations prohibits imputation of income from any person without a legal obligation to support. See discussion, supra, at 10-12. Strikingly absent from the 1994 transmittal is a discussion of the actual language of the regulations. Second, this transmittal, prepared under the direction of Mary Jo Bane, formerly a Defendant in Bray v. Dowling,[8] is by its own terms a response to ongoing litigation.[9] Therefore, it should not be accorded the deference generally given to interpretations by an agency of its governing statute or regulations. Bowen v. Georgetown University Hospital, 488 U.S. 204, 213 (1988). Finally, this memorandum goes beyond any past policy announcements and beyond the plain meaning of the regulations. Such a significant change, particularly when it conflicts with a federal appellate decision such as Beaton, should be subjected to the rigorous rule making process required by the Administrative Procedures Act. Motor Vehicle Mfrs. Ass'n. v. State Farm Mut.

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[8] Bray v. Dowling, 1994 WL 234197, at *7 n.11 (2d. Cir. May 31, 1994).

[9] The Declaration of Jo Anne B. Barnhart, Pet. App. 53, is entitled to little deference for the same reason.

Automobile Ins. Co., 463 U.S. 29, 42 (1983) (striking down agency's rule change for failure to give change full consideration on the record in rule making process); see also Rust v. Sullivan, 111 S.Ct. 1759, 1769 (1991) (upholding a change in interpretation because agency engaged in a "reasoned analysis" after rule making proceeding).

C. The Ninth Circuit Decision Complies With Federal Regulations That Require Equitable and Uniform Standards

The petitioners suggest that the result below is inequitable because households containing the same number of children will receive different amounts of money. However, when viewed from the perspective of the child, it is the petitioners' policy that is inequitable. Under the petitioners' policy the same child will receive different amounts of AFDC benefits depending upon the number of relatives with whom she lives and whether those relatives receive AFDC. For example, a child who would receive $299 if she were living with relatives who are not receiving AFDC will receive $116 if she lives with an aunt and two cousins who receive AFDC. She will receive $101 if her aunt happens to have three children, and she

will receive $91 if her aunt is taking care of two other AFDC children in addition to three of her own.[10] This leads to the absurd result that the wealthier the relative, the more money the child receives.

The results are also inequitable to the caretaker family. This is particularly clear when the caretaker has outside income in addition to AFDC. Since all the income of assistance unit members is deemed to be available to all others in the assistance unit, the consolidation of assistance units means that the non-AFDC income of the relatives is also considered available to the child. Therefore, under the California policy, if the aunt receives social security benefits or wages from work, that income will be assumed to be available to the non-sibling child. The policy also affects the income of other children in the unit. If a cousin receives income such as social security dependents' benefits, that income will be deemed to be available to the non-sibling child. Thus, the California policy

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[10] The examples set out in the Petition for Certiorari use AFDC benefit rates that were in effect in 1991-92. California has cut AFDC substantially since then. Current benefit levels are set out in the table in Appendix 1.

assumes that children who are cousins have an obligation to contribute income to each other merely because they both receive AFDC, even though that policy is directly contrary to the federal regulatory requirement that no such imputation of income is permissible. See discussion, supra, at 9-13.

The petitioners also suggest that uniformity in the AFDC program is jeopardized by the decision below. However, uniformity among the states is not an overriding concern of federal AFDC policy. Except as to requirements imposed on the states by federal regulation or statute, variation from state to state is allowed. Moreover, the petitioners' argument in favor of state flexibility will, by definition, create variation rather than uniformity.

D. The MacInnes and Bray Decisions Are Poorly Reasoned and Are Inconsistent With Federal Law

The decisions on which the petitioners rely are seriously flawed. MacInnes v. Commissioner of Pub. Welfare, 412 Mass. 790, 593 N.E.2d 222 (1992), and Bray both rely on 42 U.S.C. § 605, which requires a caretaker relative to use AFDC benefits in the best interest of the child. MacInnes and Bray conclude, based on §

605, that the caretaker relative who receives AFDC on a child's behalf is a legally responsible relative. However, the obligation to use a child's benefits in the best interest of that child is different from a legal obligation of support, which includes the duty to support the child from the non-legally responsible relative's own income and resources. No one has suggested that the caretaker relatives in these cases have misused AFDC benefits. Rather, the issue is whether the income and resources of the relative caretaker and his or her children can be used to reduce the benefits to the child.

The conclusion reached in Bray and MacInnes is contrary to the plain language of 45 C.F.R. § 233.90(a)(1) which provides that income may be deemed available only from a person who is "legally obligated to support the child under State law of general applicability." In addition, federal policy has long recognized the right of the caretaker relative to choose who is included and who is excluded from the assistance unit in order to maximize the resources available to the child. 49 Fed. Reg. 35,589 (1984). The only exception to this general policy is the mandatory inclusion amendments passed by Congress in 1984, which were at issue in

Gilliard. There, Congress specifically recognized that these amendments created an exception to the general rule that allows relative caretakers to make this choice. Staff of the Senate Finance Comm., Deficit Reduction Act of 1984, "Explanation of Provisions Approved by Committee on 3/21/84," S.Prt. 98-169, 98th Cong., 2d. Sess., Vols. 1-2 (Comm. Print 1984).

CONCLUSION

The petition for writ of certiorari should be denied.

Dated: July 21, 1994

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APPENDIX 1

CALIFORNIA AFDC BENEFIT LEVELS

Number in Assistance Unit	Monthly[11] Benefit	Increment for Added Child
1	299	299
2	490	191
3	607	117
4	723	116
5	824	101
6	926	102
7	1017	91
8	1108	91
9	1197	89
10	1286	89

[11] California Department of Social Services Eligibility and Assistance Standards Manual of Policies and Procedures § 44-315.311.